

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BENJAMIN ROBERT GALLEGOS,

Plaintiff,

v.

SGT. SAAVEDRA, et al.,

Defendants.

No. 2:24-cv-02777-DC-EFB (PC)

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. This proceeding was referred to the assigned magistrate judge by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1). In addition to filing a complaint, plaintiff has filed an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 and two requests for an order compelling the preservation of evidence. ECF Nos. 2, 7, 8.

Leave to Proceed In Forma Pauperis

Plaintiff's application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

///

///

///

Screening Standards

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.* § 1915A(b).

A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and plain statement of the claim showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)). While the complaint must comply with the “short and plain statement” requirements of Rule 8, its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

To avoid dismissal for failure to state a claim a complaint must contain more than “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at 678.

Furthermore, a claim upon which the court can grant relief must have facial plausibility. *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v. Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

////

Screening Order

Allegations of the Complaint. Plaintiff alleges that he was placed in a mental health crisis bed at California State Prison, Sacramento (“CSP-Sac”) sometime before January 23, 2024. ECF No. 1 at 7. While housed there, defendant correctional officers Hutchings and Lopez-Flores began to take items of plaintiff’s Durable Medical Equipment (“DMEs”), starting with special shoes that plaintiff needed for various conditions (including a two-inch discrepancy in leg length). *Id.* The officers required plaintiff to leave the shoes outside his cell even though plaintiff informed them that this violated his rights. *Id.* Once the shoes were outside the cell, the officers would remove them. *Id.* This caused plaintiff physical pain and psychological distress. *Id.* at 7-8.

On January 23rd, plaintiff was in his cell sitting on his walker. *Id.* at 8. He saw defendant Lopez-Flores enter the restroom and stay there “for a very long time.” *Id.* When Lopez-Flores emerged from the bathroom, he told plaintiff to come out of his cell “for weight.” *Id.* Plaintiff states that he was suspicious, because “the corrupt go into the restrooms in order to coordinate machinations off-camera on their phones.” *Id.* Plaintiff refused to leave his cell. *Id.*

Sometime later, plaintiff agreed to leave the cell and was placed in cuffs and a waist chain. *Id.* While he was outside the cell, defendant Hutchings let another inmate into the cell to clean. *Id.* Plaintiff saw his “DME seat cushion come flying out” and asked for the cushion. *Id.* Hutchings refused and told plaintiff that he could not have his walker inside his cell either. *Id.* at 8-9. Plaintiff refused to give up the walker and told Hutchings that he was approved to have the walker in his cell. *Id.* at 9.

Hutchings then “squeeshe[d]” plaintiff against the wall while Lopez-Flores gripped plaintiff’s left arm. *Id.* Someone activated an alarm, leading to the arrival of additional staff, including defendant Sergeant Saavedra. *Id.* Plaintiff told Saavedra that he was approved for his DMEs, and Saavedra asked plaintiff if he was going to release the walker. *Id.* Plaintiff refused. *Id.* Saavedra then asked defendant nurse Musat to complete a “7219” exam on plaintiff noting no injuries. *Id.* A 7219 exam must be completed after corrections staff uses force against an inmate. *Id.* at 4. Musat completed the exam and associated report. *Id.* at 9. Plaintiff objected, saying,

1 “How are you going to do a 7219 before they batter and assault me?” *Id.* Saavedra denied that
2 plaintiff would be assaulted. *Id.*

3 Hutchings wrenched plaintiff’s cuffs upward, causing severe pain due to several medical
4 conditions plaintiff suffers from. *Id.* Plaintiff noted that defendant correctional officer Pesole
5 was standing so that his body-worn camera was capturing the incident. *Id.* Saavedra directed
6 Pesole to change positions. *Id.* at 9-10. Pesole took Hutchings’s place, and Saavedra patted
7 Hutchings on the back and told him, “Good job,” which made plaintiff’s blood boil. *Id.* at 10.
8 Saavedra ordered Pesole, Lopez-Flores, and defendant correctional officer Rios to confiscate the
9 walker and place plaintiff back in his cell. *Id.* Plaintiff resisted. *Id.*

10 Pesole grabbed plaintiff’s thumb and bent it backwards. *Id.* Pesole, Lopez-Flores, and
11 Rios got plaintiff into his cell and knocked their body-worn cameras to the ground. *Id.* They
12 threw plaintiff to the ground, got on top of him, and punched him at least 2 times. *Id.* Plaintiff
13 was knocked unconscious. *Id.* at 11. The right side of plaintiff’s head, including his eye, temple,
14 and jaw, became purple, blue, and swollen. *Id.*

15 Musat then submitted the sham 7219 report, preventing a doctor from following up with
16 plaintiff. *Id.* At some unspecified time, Sergeant Swift (not a defendant) arrived and, after
17 plaintiff told him what had happened, ordered Musat to do a “righteous 7219.” *Id.* at 11-12.
18 Nevertheless, defendant Lieutenant Albarca only acknowledged the pre-assault 7219 and wrote a
19 report stating that plaintiff had no injuries. *Id.* at 12. Plaintiff did not receive a CT scan of his
20 head for three months, even though CSP-Sac had a CT machine on-site. *Id.* at 13. The scan
21 showed nothing wrong. *Id.*

22 Analysis. Plaintiff claims that defendants Saavedra, Lopez-Flores, Rios, Hutchings, and
23 Pesole inflicted excessive force on him, that defendants Saavedra, Musat, Hutchings, and Lopez-
24 Flores deprived him of necessary medical care and/or medical devices, and that various
25 defendants covered up for the misconduct of their fellow staff. *Id.* at 4-13.

26 To state a claim of excessive force in violation of the Eighth Amendment, a plaintiff must
27 allege facts that show that a correctional officer used force against him maliciously and
28 sadistically to cause harm, rather than in a good-faith effort to maintain or restore discipline.

1 *Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992). To determine whether the evidence establishes
2 such a scenario, the factfinder may consider: (1) the need for force; (2) the relationship between
3 that need and the amount of force used; (3) the threat reasonably perceived by the officer; (4) the
4 extent of injury suffered by the plaintiff; and (5) any efforts made to temper the severity of the
5 forceful response. *Id.* at 7. Construed liberally, and for the purposes of § 1915A, plaintiff has
6 stated potentially cognizable excessive force claims against defendants Saavedra, Lopez-Flores,
7 Hutchings, Rios, and Pesole.

8 To state an Eighth Amendment claim predicated on indifference to medical needs, a
9 plaintiff must allege facts showing that: (1) he had a serious medical need and (2) the defendant's
10 response to that need was deliberately indifferent. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir.
11 2006); *see also Estelle v. Gamble*, 429 U.S. 97, 106 (1976). A serious medical need exists if the
12 failure to treat the condition could result in further significant injury or the unnecessary and
13 wanton infliction of pain. *Jett*, 439 F.3d at 1096. To act with deliberate indifference, a prison
14 official must both be aware of facts from which the inference could be drawn that a substantial
15 risk of serious harm exists, and he must also draw the inference. *Farmer v. Brennan*, 511 U.S.
16 825, 837 (1994). Construed liberally, and for the purposes of §1915A screening only, plaintiff
17 has stated potentially cognizable deliberate indifference claims against defendants Saavedra,
18 Musat, Hutchings, and Lopez-Flores.

19 Allegations that state actors have acted to cover-up the constitutional wrongs of others are
20 cognizable only where the cover-up (1) caused the constitutional violation or (2) prevented the
21 plaintiff from obtaining redress for a constitutional violation. *See Karim-Panahi v. L.A. Police*
22 *Dep't*, 839 F.2d 621, 625 (9th Cir. 1988); *Chance v. Phelan*, No. 2:22-cv-06175-FMO-SSC, 2024
23 U.S. Dist. LEXIS 245694, at *11-12 (C.D. Cal. Feb. 9, 2024); *Dell v. Espinoza*, No. 1:16-cv-
24 1769-MJS (PC), 2017 U.S. Dist. LEXIS 17310, at *15-16 (E.D. Cal. Feb. 7, 2017). A cover-up
25 that happens subsequent to a constitutional violation cannot cause the constitutional violation and
26 thus does not state a cognizable claim unless it deprives the plaintiff of access to the courts. *Dell*,
27 2017 U.S. Dist. LEXIS 17310, at *15-16. Even then, the access to courts claim is premature
28 where, as here, the challenge the underlying violation remains pending. *Id.* Plaintiff has stated a

1 potentially cognizable claim against defendants Saavedra and Musat for preparing the sham
2 medical report prior to the incident of excessive force and thereby encouraging or precipitating
3 the assault, in violation of the Eighth Amendment. He has not stated a cognizable cover-up claim
4 against any other defendant, as his other cover-up allegations concern conduct occurring after the
5 assault and his challenge to the incident (this case) remains pending.

6 Plaintiff has also named CSP-Sac and the California Department of Corrections and
7 Rehabilitation (“CDCR”) as defendants. These entities are agencies of the State of California
8 and, as such, enjoy immunity from suit under the 11th Amendment. *Brown v. Cal. Dep’t of*
9 *Corr.*, 554 F.3d 747, 752 (9th Cir. 2009). Accordingly, plaintiff’s claims against CSP-Sac and
10 CDCR are not cognizable.

11 Plaintiff will be provided an opportunity to file an amended complaint to attempt to
12 correct these deficiencies. Plaintiff is not obligated to amend the complaint; he may instead
13 choose to proceed only on the claims identified in this order as potentially cognizable.

14 Leave to Amend

15 If plaintiff chooses to file an amended complaint, he should note that any amended
16 complaint must identify as a defendant only persons who personally participated in a substantial
17 way in depriving him of a federal constitutional right. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th
18 Cir. 1978) (a person subjects another to the deprivation of a constitutional right if he does an act,
19 participates in another’s act or omits to perform an act he is legally required to do that causes the
20 alleged deprivation).

21 Further, any amended complaint must be written or typed so that it so that it is complete in
22 itself without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an
23 amended complaint supersedes any earlier filed complaint, and once an amended complaint is
24 filed, the earlier filed complaint no longer serves any function in the case. *See Forsyth v.*
25 *Humana*, 114 F.3d 1467, 1474 (9th Cir. 1997) (the “amended complaint supersedes the original,
26 the latter being treated thereafter as non-existent.”) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th
27 Cir. 1967)).

28 ///

1 The court cautions plaintiff that failure to comply with the Federal Rules of Civil
 2 Procedure, this court's Local Rules, or any court order may result in this action being dismissed.
 3 See Local Rule 110.

4 Requests for Preservation of Evidence

5 Plaintiff asks the court to issue an order compelling the preservation of video footage of
 6 the assault. ECF Nos. 7, 8. He states that he has not been allowed to view the video recording
 7 and a Lieutenant Carabello told him that it no longer exists.

8 Once a complaint is filed, parties are obligated to preserve relevant evidence or evidence
 9 that could reasonably lead to the discovery of admissible evidence, and courts are empowered to
 10 sanction a party if it destroys such evidence. *Leon v. IDX Sys. Corp.*, 464 F.3d 951, 959 (9th Cir.
 11 2006); *Bright Solutions for Dyslexia, Inc. v. Doe*, No. 15-cv-01618-JSC, 2015 U.S. Dist. LEXIS
 12 117252, at *5-6 (N.D. Cal. Sept. 1, 2015). In addition, federal courts have authority to issue
 13 preservation orders as part of their general authority over case management. *Lopez v. Cate*, No.
 14 1:10-cv-01773-AWI-SKO (PC), 2014 U.S. Dist. LEXIS 98950, at *4-5 (E.D. Cal. July 14, 2014).
 15 However, courts must apply restraint when exercising such authority. *Bright Solutions*, 2015
 16 U.S. Dist. LEXIS 117252, at *6. When determining the propriety of issuing a preservation order,
 17 courts consider a number of factors, including:

- 18 1) The court's level of concern that the evidence will be preserved absent an order
 19 (sometimes articulated as whether there is a significant chance that the evidence will
 20 be destroyed absent an order);
 - 21 2) Whether the party seeking preservation will suffer irreparable harm absent the order;
 - 22 3) The ability of the opposing party to preserve the evidence; and
 - 23 4) Whether a preservation order can be crafted that will be effective yet not overbroad.
- 24 *Bright Solutions*, 2015 U.S. Dist. LEXIS 117252, at *6-7; *Am. LegalNet, Inc. v. Davis*, 673 F.
 25 Supp. 2d 1063, 1071-72 (C.D. Cal. 2009).

26 The parties to this suit have an obligation to maintain the video recording of the assault, as
 27 it is clearly relevant to plaintiff's claims. To assess whether a preservation order is necessary in
 28 this instance despite that obligation, the court would benefit from defendants' response to

1 plaintiff's motions. Accordingly, the court will defer ruling on the motions until service of the
2 complaint has been accomplished, at which time the court will direct the served defendants to
3 respond to the motions.

4 Conclusion

5 Accordingly, IT IS ORDERED that:

- 6 1. Plaintiff's application to proceed in forma pauperis (ECF No. 2) is GRANTED;
- 7 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in
8 accordance with the notice to the custodial agency filed concurrently herewith;
- 9 3. Plaintiff's complaint (ECF No. 1) alleges, for screening purposes, potentially
10 cognizable Eighth Amendment claims against defendants Saavedra, Lopez-Flores,
11 Hutchings, Rios, Pesole, and Musat.
- 12 4. All other claims are dismissed with leave to amend within 30 days of service of this
13 order. Plaintiff is not obligated to amend his complaint.
- 14 5. Within thirty days plaintiff shall return the notice below advising the court whether he
15 elects to proceed with the cognizable claims or file an amended complaint. If the
16 former option is selected and returned, the court will enter an order directing service at
17 that time. In addition, the court will direct defendants to respond to the pending
18 motions for preservation of evidence.
- 19 6. Failure to comply with any part of this this order may result in dismissal of this action.
- 20

21 Dated: July 17, 2025

22 
EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BENJAMIN ROBERT GALLEGOS,

Plaintiff,

v.

SGT. SAAVEDRA, et al.,

Defendants.

No. 2:24-cv-02777-DC-EFB (PC)

NOTICE OF ELECTION

In accordance with the court's Screening Order, plaintiff hereby elects to:

(1) _____ proceed only with the Eighth Amendment claims against Saavedra, Lopez-Flores, Hutchings, Rios, Pesole, and Musat.

OR

(2) _____ delay serving any defendant and file an amended complaint.

Plaintiff

Dated: